155.

SUPREME COURT OF THE UNITED STATES.

No. 79.

JOHN HARRIS, CLAIMANT OF 61 PIECES OF CLOTHS AND CASSIMERES, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a Circuit Court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in April, in the year of our Lord one thousand eight hundred and forty-two. Present: the honorable Roger B. Taney, chief justice of the Supreme Court of the U. States; Upton S. Heath, judge of Maryland district; Z. Collins Lee, esq., attorney; Thomas B. Pottinger, esq., marshal; Thomas Spicer, clerk.

Among other, were the following proceedings, to wit:

SIXTY-ONE PIECES OF CLOTHS AND CASSIMERES—
JOHN HARRIS, claimant, plaintiff in error,
vs.
THE UNITED STATES OF AMERICA, defendants in error.

Be it remembered, that heretofore, to wit, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and forty-one, the said John Harris, claimant of the said sixty-one pieces of cloths and cassimeres, by Jonathan Meredith and St. George W. Teackle, his attorneys, filed in the circuit court here the transcript of a record from the District Court of the United States in and for the Maryland district, in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a District Court of the United States, in and for the Maryland district, begun and held at the city of Baltimore on the first Tuesday in September, in the year of our Lord one thousand eight hundred and forty. Present: the honorable Upton S. Heath, judge of Maryland district; Nathaniel Williams, esq., attorney; Nicholas Snider, esq., marshal; Thomas Spicer, clerk.

Among other, were the following proceedings, to wit:

THE UNITED STATES
vs.
61 PIECES OF CLOTHS AND CASSIMERES—
JOHN HARRIS, claimant.

Be it remembered, that heretofore, to wit, on the twenty-seventh day of December, in the year of our Lord one thousand eight hundred and thirty-nine, the said United States of America, by Nathaniel Williams, attorney of the United States in and for the

Maryland district, filed in the district court here a certain information against the said Sixty-one pieces of Cloths and Cassimeres, in the words and of the tenor following, to wit:

Information.

DISTRICT COURT OF THE U. S. OF AMERICA,
For the district of Maryland.

At a District Court of the United States of America for the district of Maryland, held in the city of Baltimore, in the district of Maryland, before the judge of the same court.

On the twenty-seventh day of December, in the year eighteen hundred and thirty-nine, comes Nathaniel Williams, attorney of the United States for the district of Maryland, who prosecutes for the United States in this behalf, and being present here in court in his own proper person, in the name and on behalf of the United States, alleges, informs, and declares as follows, to wit: that William Frick, collector of the customs for the district of Baltimore, in the district of Maryland, heretofore, to wit, on the twenty-third day of August, in the year eighteen hundred and thirty-nine, at the city of Baltimore, in the district aforesaid, and within the jurisdiction of this court, seized on land as forfeited to the use of the United States, sixty-one pieces of goods, wares, and merchandise, marked and numbered 4,798, 4,799, 4,800, 4,801, 4,853, 4,807, 4,809, 4,810, 4,811, 4,812, 4,813, 4,814, 4,815, 4,816, 4,817, 4,818, 4,819, 4,778, 4,779, 478 , 4,781, 4,782, 4,783, 4,784, 4,785, 4,786, 4,787, 4,788, 4,789, 4,790, 4,791, 4,840, 4,841, 4,842, 4,843, 4,761, 4,762, 4,763, 4,739, 4,740, 4,740, 4,463, 4,464, 4,465, 4,466, 4,467, 4,469, 4,468, 4,470, 4,471, 4,472, 4,473, 4,474, 4,475, 4,476, 4,477, 4,478, 4,479, 4,480, respectively; of which a part are cloths and part cassimeres, for the causes and reasons following, that is to say:

First Count.

For that the above mentioned and described goods, wares, and merchandise, were of the growth, produce, and manufacture of some foreign country or place to the said attorney as yet unknown, and were heretofore, to wit, on the first day of March, in the year eighteen hundred and thirty-nine, brought in a certain vessel or vessels to the said attorney as yet unknown, from some foreign port or place to the said attorney as yet unknown, into some port or place of some district of the United States to the said attorney as yet unknown; and being so brought as aforesaid, the said goods, wares, and merchandise were, on the day and year last aforesaid, unladen and delivered from the vessel or vessels in which the same had been brought, as aforesaid, within the United States, to wit, at some port or place of the district as aforesaid, to the said attorney as yet unknown, without a permit from the collector or naval officer

of the port or district where the same were so unladen or delivered, for such unlading and delivery, against the form of the 50th section of the act of Congress which was passed on the 2d March, 1799, entitled "An act to regulate the collection of duties on imports and tonnage."

Second Count.

And also, for that the aforesaid goods, wares, and merchandise were of the growth, produce, and manufacture of some foreign country or place to the attorney aforesaid as yet unknown, and were heretofore, to wit, on the first day of March, in the year eighteen hundred and thirty-nine, brought in a certain vessel or vessels to the said attorney as yet unknown, into the port of New York, in the collection district of the city of New York, in the southern district of New York; and the said goods, wares, and merchandise, being so brought as aforesaid, were, on the day and year last aforesaid, unladen and delivered from the vessel or vessels in which the same had been brought as aforesaid, within the United States, to wit, at the said port of New York, in the collection district of the city of New York, in the southern district of New York, without a permit from the collector or naval officer of the said port or district last mentioned, for such unlading or delivery, against the form of the 50th section of the act of Congress aforesaid.

Third Count.

And also, for that the aforesaid goods, wares, and merchandise, being of the growth, produce, and manufacture of some foreign country or place to the attorney aforesaid unknown, were heretofore, to wit, on the first day of March, in the year eighteen hundred and thirty-nine, brought and imported in a certain vessel or vessels, the name or names whereof are to the attorney aforesaid as yet unknown, from some foreign port or place to the attorney aforesaid as yet unknown, into the port of New York, in the collection district of the city of New York, in the southern district of New York; which said goods, wares, and merchandise were subject to the payment of duties to the United States, on being so brought and imported as aforesaid; and that, on entry of the before mentioned goods, wares, and merchandise having been made, to wit, on the day and year last aforesaid, at the office of the collector of the collection district of the city of New York, in the southern district of New York, the said goods, wares, and merchandise were afterwards, to wit, on the twenty-third day of August, in the year last aforesaid, at the district of Maryland, found not to have been invoiced, and were not invoiced according to the actual cost thereof, at the place of exportation, with design to evade the duties thereupon, or a part thereof, against the form of the 66th section of the act of Congress aforesaid.

4th Count.

And also, for that the aforesaid goods, wares, and merchandise, being of the growth, produce, and manufacture of some foreign country or place to the attorney aforesaid unknown, were heretofore, to wit, on the first day of March, in the year eighteen hundred and thirty-nine, brought and imported in a certain vessel or vessels, the name or names whereof are to the attorney aforesaid as yet unknown, from a foreign port or place to the attorney aforesaid as yet unknown, into the port of New York, in the collection district of the city of New York, in the southern district of New York; which said goods, wares, and merchandise were subject to the payment of duties to the United States, on being so brought and imported as aforesaid; and that entries of the before mentioned goods, wares, and merchandise having been made, to wit, on the day and year last aforesaid at the office of the collector of the collection district of the city of New York, within the southern district of New York, all and each of the packages in the said entries, so made as aforesaid, were found on examination to differ in their contents from the entries made as aforesaid, against the form of the 67th section of the act of Congress aforesaid.

5th Count.

And also, for that the aforesaid goods, wares, and merchandise, being of the growth, produce, and manufacture of some foreign country or place to the attorney aforesaid as yet unknown, were heretofore, to wit, on the first day of March, in the year eighteen hundred and thirty-nine, brought and imported in a certain vessel or vessels, the name or names whereof are to the attorney aforesaid as yet unknown, from some foreign port or place to the attorney aforesaid as yet unknown, into the United States; which said goods, wares, and merchandise, were subject to the payment of duties to the United States, and being so brought and imported as aforesaid, were, on the day of the seizure aforesaid, found concealed in a certain store in the city of Baltimore, in the district of Maryland aforesaid; the duties on the said goods, wares, and merchandise not having been before that time paid, or secured to be paid, against the form of the 68th section of the act of Congress aforesaid.

6th Count.

And also, for that the aforesaid goods, wares, and merchandise, being of the growth, produce, and manufacture of some foreign country or place to the attorney aforesaid as yet unknown, were heretofore, to wit, on the first day of March, in the year eighteen hundred and thirty-nine, brought and imported in a certain vessel or vessels, the name or names whereof are to the attorney aforesaid as yet unknown, from some foreign port or place to the attor-

ney aforesaid as yet unknown, into the port of New York, in the collection district of the city of New York, in the southern district of New York; which said goods, wares, and merchandise, were subject to the payment of ad valorem duties to the United States; and that an entry of the said goods, wares, and [merchandise] having been made, to wit, on the day and year last aforesaid, at the office of the collector of the collection district of the city of New York, in the southern district of New York, afterwards, to wit, on the twenty-third day of August, in the year eighteen hundred and thirty-nine, at the district of Maryland, all and each of the several invoices, and all and each of the several packages in each and every of the several invoices included in the said entry, were found to be made up with intent, by a false valuation or extension, to evade or defraud the revenue of the United States, against the form of the 4th section of the act of Congress, which was approved on the 28th May, 1830, entitled "an act for the more effectual collection of the import duties."

7th Count.

And also, for that the aforesaid goods, wares, and merchandise, being of the growth, produce, and manufacture of some foreign country or place to the attorney aforesaid as yet unknown, were heretofore, to wit, on the first day of March, in the year eighteen hundred and thirty-nine, brought and imported in a certain vessel or vessels, the name or names whereof are to the attorney aforesaid as yet unknown, from some foreign port or place to the attorney aforesaid as yet unknown, into the port of New York, in the collection district of the city of New York, within the southern district of New York; which said goods, wares, and merchandise were subject to the payment of ad valorem duties to the United States, on being so brought and imported as aforesaid; and that an entry of the said goods, wares, and merchandise having been made, to wit, on the day and year last aforesaid, at the office of the collector of the collection district of the city of New York, in the southern district of New York, afterwards, to wit, on the twenty-third day of August, in the year eighteen hundred and thirty-nine, at the district of Maryland, each of the invoices included in such entry were found to be made up with intent, by a false valuation or extension, to evade or defraud the revenue of the United States, against the form of the 4th section of the act of Congress last aforesaid.

8th Count.

And also, for that the aforesaid goods, wares, and merchandise, being of the growth, produce, and manufacture of some foreign country or place to the attorney aforesaid as yet unknown, were heretofore, to wit, on the first day of March, in the year eighteen

hundred and thirty-nine, brought and imported in a certain vessel or vessels, the name or names whereof are to the attorney aforesaid as yet unknown, from some foreign port or place to the attorney aforesaid as yet unknown, into the port of New York, in the collection district of the city of New York, within the southern district of New York; which said goods, wares, and merchandise were subject to the payment of ad valorem duties on being so brought and imported as aforesaid; and that an entry of the said goods, wares, and merchandise having been made, to wit, on the day and year last aforesaid, at the office of the collector of the collection district of the city of New York, in the southern district of New York; afterwards, to wit, on the twenty-third day of August, in the year eighteen hundred and thirty-nine, at the district of Maryland, all and each of the said several packages, contained in each and every of the invoices included in the said entry, were found to be made up with intent, by a false valuation or extension, to evade or defraud the revenue of the United States, against the form of the 4th section of the act of Congress last aforesaid.

9th Count.

And also, for that the aforesaid goods, wares, and merchandise, being of the growth, produce, and manufacture of some foreign country or place to the attorney aforesaid as yet unknown, and being composed wholly of wool, were, heretofore, to wit, on the first day of March, in the year eighteen hundred and thirty-nine, brought and imported in a certain vessel or vessels, the name or names whereof are to the attorney aforesaid as yet unknown, from some foreign port or place to the attorney aforesaid as yet unknown, into the port of New York, in the collection district of the city of New York, within the southern district of New York; which said goods, wares, and merchandise were subject to the payment of duties to the United States, on being so brought and imported as aforesaid; and that an entry of the said goods, wares, and merchandise having been made, to wit, on the day and year last aforesaid, at the office of the collector of the collection district of the city of New York, in the southern district of New York, on the opening and examination of the packages of said goods, wares, and merchandise, afterwards, to wit, on the twenty-third day of August, in the year last aforesaid, at the district of Maryland aforesaid, each and every of the said packages included in the said entry, were found to be made up with*in* intent to evade or defraud the revenue of the United States, against the form of the 14th section of the act of Congress, which was approved on the 14th July, 1832, entitled "an act to alter and amend the several acts imposing duties on imports."

By reason of all which the premises, and the acts of Congress in this behalf made and provided, the said goods, wares, and merchan-

dise have become, and are forfeited to the uses in said acts specified. Wherefore the attorney aforesaid prays the advice and consideration of the court in the premises, and for a monition or other proper process to issue herein, to the end that the said goods, wares, and merchandise may be decreed to be, and remain forfeited, and that the proceeds, after condemnation, may be distributed according to the provisions of the acts of Congress in such cases made and provided.

NATHL. WILLIAMS,
Attorney of the United States, for the district of Maryland.

And now here, on this day, to wit, the thirteenth day of February, in the year of our Lord one thousand eight hundred and forty, a certain John Harris, of the city of New York, filed in the district court here his claim to the said sixty-one pieces of cloths and cassimeres, in the words following, to wit:

THE UNITED STATES,
vs.
61 PIECES OF CLOTHS AND CASSIMERES,
JOHN HARRIS, claimant.
} Claim.

In the District Court of the United States for the Maryland district—March term, 1840.

And John Harris, of the city and State of New York, comes and claims as his own property, certain goods, wares, and merchandise seized by William Frick, collector of the customs for the district of Baltimore, in the district of Maryland aforesaid, and libelled and propounded against as forfeited, in and by the libel of information aforesaid, and numbered as follows, to wit: 4,798, 4,799, 4,800, 4,801, 4,853, 4,806, 4,807, 4,808, 4,809, 4,810, 4,811, 4,812, 4,813, 4,815, 4,816, 4,817, 4,818, 4,819, 4,778, 4,779, 4,780, 4,781, 4,782, 4,783, 4,784, 4,785, 4,786, 4,787, 4,788, 4,789, 4,790, 4,791, 4,840, 4,841, 4,842, 4,843, 4,761, 4,762, 4,763, 4,739, 4,740, 4,463, 4,464, 4,465, [4,465,] 4,466, 4,467, 4,468, 4,469, 4,470, 4,471, 4,472, 4,473, 4,474, 4,475, 4,476, 4,477, 4,478, 4,479, 4,480; and the said John Harris alleges, that at the time of the seizure aforesaid, he was, and yet is, the true, sole, and lawful owner and proprietor, bona fide, of the said goods, wares, and merchandise; and of this he is ready to make due proof by his own oath, and otherwise as the court shall direct.

JOHN HARRIS.

SOUTHERN DISTRICT OF NEW YORK,
State of New York, city of New York, ss:

Be it remembered, that on this eleventh day of February, in the year of our Lord one thousand eight hundred and forty, John Har-

ris personally appeared before me, the subscriber, a commissioner duly appointed by the Circuit Court of the United States, in and for the southern district of New York, under and by virtue of the acts of Congress in such case made and provided, and made oath, that the matters and things stated in the aforegoing claim are true as stated.

Sworn before GEO. W. MORTON,
U. S. Com.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

I, Frederick J. Betts, clerk of the Circuit Court of the United States for the southern district of New York, do hereby certify, that George W. Morton, whose name, in his own proper handwriting, is subscribed to the jurata to the annexed claim, was, at the time of signing the same, a commissioner, duly appointed by the Circuit Court of the United States for the southern district of New York, under and by virtue of the acts of Congress in such case made and provided.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said circuit court, this eleventh [L. s.] day of February, in the year of our Lord one thousand eight hundred and forty, and of the independence of the United States the sixty-fourth.

FRED. J. BETTS.

And now here, on this day, to wit, the twenty-first day of February, in the year of our Lord one thousand eight hundred and forty, the said John Harris filed his answer to the information of the said United States of America against the said Sixty-one pieces of cloths and cassimeres, in the words following, to wit:

THE UNITED STATES,
vs.
61 PIECES OF CLOTHS & CASSIMERES—
JOHN HARRIS, claimant.
} Answer.

And now comes here John Harris, by John V. L. McMahon and St. George W. Teackle, his proctors, and for answer denies that the said sixty-one pieces of cloths and cassimeres are justly and legally liable to forfeiture, for any of the causes alleged in said information, or in any count thereof; wherefore he prays that the said information may be dismissed with his costs.

J. V. L. McMAHON,
ST. GEO. W. TEACKLE,
Proctors for Claimant.

And now here, on this day, to wit, the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and forty, the said United States of America, by their attorney afore-

said, filed in the district court here their replication to the said answer of the said John Harris, in the words following, to wit:

UNITED STATES
vs.
61 PIECES OF CLOTHS AND CASSIMERES. } Replication.

In the district court of the United States for the district of Maryland.

Replication.

And the said attorney of the United States, by way of replication to the said answer of John Harris, doth aver that the matters contained in his information are true in fact, and sufficient in law to maintain a decree of forfeiture according to the prayer thereof; of all which matters he is ready to make due proof, as the court shall direct.

NATH'L WILLIAMS,
Dist. Att'y U. S. Dist. Md.

And now here, on this day, to wit, the first Tuesday in March, in the year of our Lord one thousand eight hundred and forty, comes into the district court here the said United States of America, by their attorney aforesaid; and the said John Harris, claimant of the said sixty-one pieces of cloths and cassimeres, by J. V. L. McMahon and St. G. W. Teackle, his attorneys. Thereupon the parties aforesaid, by their attorneys aforesaid, pray leave of the court here to amend their pleadings generally, and to them it is granted.

And the said John Harris, by his attorneys aforesaid, suggests to the court here that he cannot with safety proceed, at this term, to the trial of this cause, for want of material and competent testimony beyond seas, and prays that a day may be given for the trial thereof, and also that a commission may issue to examine evidences in this cause, and that the depositions to be taken under and in virtue of the said commission, and therewith returned, may be read in evidence at the trial: and the same is granted him. Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is continued until the first Tuesday in June next.

At which said first Tuesday in June, in the year of our Lord one thousand eight hundred and forty, come again into the district court here as well the said United States of America, by their attorney aforesaid, as the said John Harris, by J. Meredith and St. G. W. Teackle, his attorneys.

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the first Tuesday in September next.

And now here, at this day, to wit, the twenty-fifth day of August, in the year of our Lord one thousand eight hundred and forty, the said John Harris, by his attorneys aforesaid, files in the district court here the following pleas, to wit:

THE UNITED STATES
vs.
SIXTY-ONE PIECES OF CLOTHS AND CASSIMERES—
JOHN HARRIS, claimant.
} Information.

In the district court of the United States for the district of Maryland.

Pleas.

And now comes into the said district court, by Jonathan Meredith and St. Geo. W. Teackle, his attorneys, , admitted by the court here as claimant of the said sixty-one pieces of cloths and cassimeres in the said information mentioned, and for plea to the said information, and the several causes for seizure and forfeiture of the said sixty-one pieces of cloths and cassimeres therein alleged, and in order to entitle him, the said claimant, to the restitution of the said goods, wares, and merchandise, he, the said claimant, alleges as follows:

1st plea.

And as to the seizure of the said goods, wares, and merchandise, alleged in the said information to have been made by William Frick, collector of the customs for the district of Baltimore, in the district of Maryland; and as to the allegations in the said information, that the said goods, wares, and merchandise were seized by said William Frick, collector as aforesaid, for the nine several causes or reasons of forfeiture therein alleged, he, the said claimant, says: That the said goods, wares, and merchandise were not in fact seized by said William Frick, collector as aforesaid, in manner and form as in said information alleged, for the causes alleged in the first, second, third, fourth, sixth, seventh, eighth, and ninth counts or allegations of causes of forfeiture in said information alleged; and of this the said claimant puts himself upon the country, &c.

2d plea.

And as to the seizure of the said goods, wares, and merchandise, alleged in the said information to have been made by the said William Frick, collector of the customs for the district of Baltimore, in the district of Maryland aforesaid, he, the said claimant, further says: That on the twenty-third day of August, in the year of our Lord one thousand eight hundred and thirty-nine, at the city of Baltimore, at the district of Maryland aforesaid, the said William Frick, the seizer aforesaid of the said goods, wares, and merchandise, named in said information, issued and delivered the following warrant to George W. Burke and Theodore Anderson, to wit:

"DISTRICT OF BALTIMORE."

To George W. Burke and Theodore Anderson.

Whereas I, William Frick, collector of the customs of the district of Baltimore, have received information that certain goods, wares, and merchandise liable to duty have been introduced into this collection district contrary to law, and without a permit first had and obtained for that purpose, and with intent to defraud the revenue of the United States; and whereas, I have cause to suspect that the said goods, wares, and merchandise are concealed in the store or stores of H. Beadel & Co. and Robert A. Taylor & Co., in German street, and in the store or stores of Hoffmans & Co., North Charles street: Now, by virtue of the sixty-eighth section of the collection law, these therefore are to authorize the said George W. Burke and Theodore , after you shall have obtained a warrant for that purpose from one of the justices of the peace of the State of Maryland in and for the city of Baltimore, to enter the said store or stores, in the day time only, and there make diligent search; and if any of the said goods, wares, and merchandise be found, you seize and secure the same for trial.

Witness my hand, seal, this twenty-third day of August, anno domini one thousand eight hundred and thirty-nine.

(Signed) WM. FRICK, [SEAL] *Collector.*

And that thereupon, on the day and year aforesaid, at Baltimore, in the district of Maryland aforesaid, a certain Robert M. Welsh, a justice of the peace of the State of Maryland in and for the city of Baltimore aforesaid, issued and delivered to the said George W. Burke and Theodore Anderson, the following warrant, to wit:

CITY OF BALTIMORE.

The United States of America to George W. Burke and Theodore Anderson, greeting:

Whereas, information is given before me, Robert M. Welsh, esq., one of the justices of the peace for the State of Maryland in and for the city of Baltimore, by George Gideon, of Philadelphia, now in the city of Baltimore, who did depose and say, that he had reason to suspect, and doth verily suspect, that certain goods, wares, and merchandise subject to duty, have been brought contrary to law within the district of Baltimore, to defraud the revenue of the United States; and whereas the said George Gideon did further depose and say, that the said goods, wares, and merchandise are, as he doth verily believe, stored and secured in the store or stores of H. Beadel & Co. and Robert A. Taylor & Co., situate in German street, and Hoffmans & Co., North Charles street, in the city of Baltimore; and whereas William Frick, collector of the port of Baltimore, in pursuance of the authority given to him by the sixty-eighth section of the collection law, has duly authorized and empowered George

W. Burke and Theodore Anderson to act in the premises agreeably to the terms of the said authorization hereto annexed: Now, by virtue of the power and authority given to you by the said authorization, these are, therefore, to require you, the said George W. Burke and Theodore Anderson, to enter the aforesaid described stores, in the day time only, and there to search for the goods, wares, and merchandise, and if any shall be found, to seize and secure the same for trial.

In witness whereof, I, Robert M. Welsh, esquire, hereunto set my hand and seal, this twenty-third day of August, anno domini one thousand eight hundred and thirty-nine.

(Signed.) ROBERT M. WELSH. [SEAL.]

And that under and by virtue of the said warrants from the said William Frick, collector as aforesaid, and Robert M. Welsh, justice of the peace as aforesaid, the said George W. Burke and Theodore Anderson afterwards, to wit, on the day and year aforesaid, made the seizure of the goods, wares, and merchandise mentioned in said information, and not under any authority, or for any other cause, than for that appearing by said warrant, and that there has been no other seizure of the said goods, wares, and merchandise mentioned in said information, except the aforesaid seizure made as aforesaid by the said George W. Burke and Theodore Anderson; and this the claimant is ready to verify: wherefore he prays judgment, if the said goods, wares, and merchandise ought to be decreed to be forfeited to the United States.

Third plea.

And as to the seizure of the said goods, wares, and merchandise alleged in the said information, he the said claimant further says, that the said goods, wares, and merchandise in said information alleged to have been seized, were heretofore, to wit, on the first day of March, in the year of our Lord one thousand eight hundred and thirty-nine, imported by him the said claimant into the port of New York, in the collection district of the city of New York, in the southern district of New York; and that having been so imported, the said goods, wares, and merchandise were afterwards, to wit, on the day and year aforesaid, at the district aforesaid, duly entered at the office of the collector of the said collection district of New York, in the said southern district of New York, and were unladen and delivered from the vessel in which they were so imported, and by virtue of a permit granted by said collector; and that after the said goods, wares, and merchandise had been so entered, the said collector, in order to the ascertainment of the duties on the same, afterwards, to wit, on the day and year aforesaid, at the district last aforesaid, did cause the said goods, wares, and merchandise to be appraised according to the actual value thereof, at the time at which they were purchased, and the place from which they were imported by him the said claimant,

and did then and there cause several packages, to wit, one package out of every invoice, and one package out of every twenty packages of said goods, wares, and merchandise to be opened and examined; and that upon the said opening and examination of said packages, the said packages so opened and examined were then, to wit, on the day and year aforesaid, at the district aforesaid, found and represented to the said collector to be correctly and fairly invoiced and put up; and that after the said examination and appraisement, the duties on said goods, wares, and merchandise were duly ascertained and estimated by said collector; and being so ascertained and estimated, he the said claimant paid the duties so ascertained to the said collector, to wit, on the day and year aforesaid, at the district aforesaid; and that, after the said payment of the said duties by him the said claimant, the said goods, wares, and merchandise were by the authority of the said collector duly delivered from the custody of the officers of the customs of the said collection district of the city of New York, to him the said claimant, to wit, on the day and year aforesaid, at the district aforesaid; and that after the said goods, wares, and merchandise had been so delivered to him the said claimant, he the said claimant afterwards, to wit, on the day and year aforesaid, at the district aforesaid, shipped the same to his agents in the city of Baltimore; and that afterwards, and whilst the said goods, wares, and merchandise were remaining in the said city of Baltimore, in the possession of the said agents of him the said claimant, to wit, on the day and year aforesaid, at the district of Baltimore, in the district of Maryland aforesaid, they the said goods, wares, and merchandise were seized by the said William Frick, collector of the customs for the district of Baltimore, in the district of Maryland aforesaid; and that is the same seizure which is alleged in the said information: and this the said claimant is ready to verify. Wherefore he prays judgment, if the said goods, wares, and merchandise ought to be decreed to be forfeited to the United States, &c.

Fourth plea.

And as to the first count and cause of forfeiture in said information alleged, he the said claimant further says, that by reason of anything in the said first count and allegation of forfeiture contained, the said sixty-one pieces of cloths and cassimeres ought not to be decreed to be forfeited; because he says that the said goods, wares, and merchandise were not unladen and delivered from any ship or vessel without a permit for such unlading and delivery from the collector or naval officer of the district wherein the same were unladen and delivered, in manner and form as in the said count and allegation is alleged. And of this he the said claimant puts himself upon the country, &c.

Fifth plea.

And as to the said second count and cause of forfeiture in the said information alleged, he the said claimant further says, that by reason

of anything in the said second count and allegation of forfeiture contained, the said goods, wares, and merchandise ought not to be decreed to be forfeited; because he says that the said goods, wares, and merchandise were not unladen from any ship or vessel at the said port of New York, in the said southern district of New York, without any permit from the collector or naval officer of said port or district, in manner and form as in the said count and allegation is alleged. And of this he the said claimant puts himself upon the country, &c.

Sixth plea.

And as to the said third count and cause of forfeiture in said information alleged, he the said claimant further says, that by reason of anything in said third count and allegation of forfeiture contained, the said goods, wares, and merchandise ought not to be decreed to be forfeited; because he says that the said goods, wares, and merchandise were not found to have been invoiced, and were not invoiced, below the actual cost thereof at the place of exportation, with design to evade the duties, or any part thereof, against the form of the sixty-sixth section of the said act of Congress therein mentioned, in manner and form as in allegation is alleged. And of this he the said claimant puts himself upon the country, &c.

Seventh plea.

And as to the said fourth count or cause of forfeiture in said information alleged, he the said claimant further says, that by reason of anything in said fourth count and allegation of forfeiture contained, the said goods, wares, and merchandise ought not to be decreed to be forfeited; because he says that the said goods, wares, and merchandise having been entered at the place and in the manner stated in said count, the packages included in the said entries of the said goods, wares, and merchandise were not found, nor were any of them found, on examination, to differ in their contents from the entries of the same, against the form of the sixty-seventh section of the said act of Congress therein mentioned, in manner and form as in said count and allegation is alleged. And of this he the said claimant puts himself upon the country, &c.

Eighth plea.

And as to the said fifth count and cause of forfeiture in said information alleged, he the said claimant further says, that by reason of anything in said fifth count and allegation of forfeiture contained, the said goods, wares, and merchandise ought not to be decreed to be forfeited; because he says, that the said goods, wares, and merchandise were not at any time before, or on the day of the aforesaid seizure of the same in said information alleged, found concealed in any store in the city of Baltimore, in the said district of Maryland; the duties on the same goods, wares, and merchandise not having

been before that time paid or secured to be paid, in manner and form as in the said fifth count and allegation of forfeiture alleged. And of this he the said claimant puts himself upon the country, &c.

Ninth plea.

And as to the said sixth count and cause of forfeiture in said information alleged, he the said claimant says, that by reason of any thing in said sixth count and allegation of forfeiture contained, the said goods, wares, and merchandise ought not to be decreed to be forfeited; because he says, that the said goods, wares, and merchandise having been entered at the place and in the manner stated in said count, all and each of the several invoices, and all and each of the several packages in each and every of the several invoices included in said entry, were not found to be made up, by a false valuation or extension, to evade or defraud the revenue of the United States, against the form of the said fourth section of the said act of Congress of the twenty-eighth day of May, one thousand eight hundred and thirty, mentioned in said count, in manner and form as in said count is alleged. And of this he the said claimant puts himself upon the country, &c.

Tenth plea.

And as to the said seventh count and cause of forfeiture in said information alleged, he the said claimant says, that by reason of anything in the said seventh count and allegation of forfeiture contained, the said goods, wares, and merchandise ought not to be decreed to be forfeited; because he says, that the said goods, wares, and merchandise having been entered at the place and in the manner stated in said count, none of the invoices included in said entry were found to be made up with intent, by a false valuation or extension, to evade or defraud the revenue of the United States, against the form of the said fourth section of the said act of Congress in said count mentioned, in manner and form as in said count and allegation alleged. And of this he the said claimant puts himself upon the country, &c.

Eleventh plea.

And as to the said eighth count and cause of forfeiture in said information alleged, he the said claimant says, that by reason of anything in said eighth count and allegation of forfeiture contained, the said goods, wares, and merchandise ought not to be decreed to be forfeited; because he says, that the said goods, wares, and merchandise having been entered at the place and in the manner stated in said count, none of the packages contained in any of the invoices included in said entry were found to be made up with intent, by a false valuation or extension, to evade or defraud the revenue of the United States, against the form of the fourth section of the said act of Congress therein mentioned, in manner and form as is

in said count and allegation alleged. And of this he the said claimant puts himself upon the country, &c.

Twelfth plea.

And as to the said ninth count and cause of forfeiture in said information alleged, he the said claimant says, that by reason of anything in said ninth count and allegation of forfeiture contained, the said goods, wares, and merchandise ought not to be decreed to be forfeited, because he says, that the said goods, wares, and merchandise having been entered at the place and in the manner stated in said count, that upon the opening and examination of the packages of said goods, wares, and merchandise included in said entry, none of said packages included in said entry were found to be made up with intent to evade or defraud the revenue of the United States, against the form of the said fourteenth section of the said act of Congress passed on the fourteenth day of July, one thousand eight hundred and thirty-two, in manner and form as in said count and allegation is alleged; and of this he the said claimant puts himself upon the country, &c.

Wherefore, he the said claimant prays that the said goods, wares, and merchandise may be restored to him, and that he may be dismissed hence with reasonable damages and costs occasioned by the premises.

J. MEREDITH,
ST. G. W. TEACKLE,
Att'ys for Claimant.

At which mentioned first Tuesday in September, in the year of our Lord one thousand eight hundred and forty, come again into the district court here, as well the said United States of America, by their attorney aforesaid, as the said John Harris, claimant of the said sixty-one pieces of cloths and cassimeres, by his attorneys aforesaid.

Demurrer to the 1st plea.

And the said United States of America, as to the said plea of the said claimant by him *first* above pleaded, say that the same, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude them the said plaintiffs from having or maintaining their said information against the said goods, wares and merchandise, and that the said plaintiffs are not bound by law to answer the same; and this the said plaintiffs are ready to verify. Wherefore, by reason of the insufficiency of the said plea in this behalf, the said plaintiffs pray judgment and condemnation of the said goods, wares, and merchandise, for the reasons and causes set forth in their said information, &c.

Joinder in demurrer to the 1st plea.

And the said John Harris says, that the plea aforesaid, in manner and form aforesaid by him the said John Harris above pleaded, and

the matters in the same contained, are good and sufficient in law to preclude the said information of the said United States of America, which said plea so pleaded, and the matters therein contained, he the said John Harris is ready to verify and prove as the said court shall award; and because the said United States of America have not answered the said plea, nor hitherto in any manner denied the same, he the said John Harris, as before, prays judgment of the said information, and that the same may be quashed, &c.

Judgment on the demurrer to the 1st plea for the plaintiffs.

Whereupon, all and singular the premises being seen and inspected by the court, and by them more fully understood, and mature deliberation being thereupon had, it seems to the court here that the said plea of the said John Harris in manner and form aforesaid pleaded, and the matters therein contained, are not sufficient in law to bar or preclude the said United States of America from having or maintaining their said information against the said sixty-one pieces of cloths and cassimeres. Therefore, it is considered by the court here, that the said information be adjudged good, and that the said John Harris further answer to the said information of the said United States of America, &c.

Demurrer to the 2d plea.

And the said United States of America, as to the said plea of the said claimant by him *second* above pleaded, say, that the same, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude the plaintiffs from having or maintaining their said information against the said sixty-one pieces of cloths and cassimeres, and that the said plaintiffs are not bound by law to answer the same; and this the plaintiffs are ready to verify. Wherefore, by reason of the insufficiency of the said plea in this behalf, the plaintiffs pray judgment and condemnation of the said sixty-one pieces of cloths and cassimeres, for the reasons and causes set forth in the said information, &c.

Joinder in demurrer to 2d plea.

And the said John Harris says, that the plea aforesaid, in manner and form aforesaid by him the said John Harris above pleaded, and the matters in the same contained, are good and sufficient in law to bar or preclude the said information of the said United States of America; which said plea so pleaded, and the matters therein contained, he the said John Harris is ready to verify and prove as the said court shall award. And because the said United States of America have not answered the said plea, nor hitherto in any manner denied the same, he the said John Harris, as before, prays judgment of the said information, and that the same may be quashed, &c.

Judgment on demurrer to the 2d plea for the plaintiffs.

Whereupon, all and singular the premises being seen and inspected by the court here, and by them more fully understood, and mature deliberation being thereupon had, it seems to the court here that the said plea of the said John Harris, in manner and form aforesaid pleaded, and the matters therein contained, are not sufficient in law to bar or preclude the said United States of America from having or maintaining their said information against the said sixty-one pieces of cloths and cassimeres. Therefore, it is considered by the court here, that the said information be adjudged good, and that the said John Harris further answer to the said information of the said United States of America, &c.

Demurrer to 3d plea.

And the said United States of America, as to the said plea of the said claimant by him *third* above pleaded, say, that the same, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude the plaintiffs from having or maintaining their said information against the said sixty-one pieces of cloths and cassimeres, and that the plaintiffs are not bound by law to answer the same; and this the plaintiffs are ready to verify. Wherefore, by reason of the insufficiency of the said plea in this behalf, the plaintiffs pray judgment and condemnation of the said sixty-one pieces of cloths and cassimeres, for the reasons and causes set forth in the said information, &c.

Joinder in demurrer to 3d plea.

And the said John Harris says that the plea aforesaid, in manner and form aforesaid by him the said John Harris above pleaded, and the matters in the same contained, are good and sufficient in law to bar or preclude the said information of the said United States of America; which said plea, so pleaded, and the matters therein contained, he, the said John Harris, is ready to verify and prove as the said court shall award; and because the said United States of America have not answered the said plea, nor hitherto in any manner denied the same, he, the said John Harris, as before, prays judgment of the said information, and that the same may be quashed, &c.

Judgment on the demurrer to 3d plea for the plaintiffs.

Whereupon, all and singular the premises being seen and inspected by the court here, and by them more fully understood, and mature deliberation being thereupon had, it seems to the court here that the said plea of the said John Harris, in manner and form aforesaid pleaded, and the matters therein contained, are not sufficient in law to bar or preclude the said United States of America from having or maintaining their said information against the said

sixty-one pieces of cloths and cassimeres. Therefore, it is considered by the court here, that the said information be adjudged good, and that the said John Harris further answer to the said information of the said United States of America, &c.

Issue to the 4th plea.

And the said United States of America, as to the said plea of the said claimant by him *fourth* above pleaded, do the like, &c.

Issue to the 5th plea.

And the said United States of America, as to the said plea of the said claimant by him *fifth* above pleaded, do the like, &c.

Issue to the 6th plea.

And the said United States of America, as to the said plea of the said claimant by him *sixth* above pleaded, do the like, &c.

Issue to the 7th plea.

And the said United States of America, as to the said plea of the said claimant by him *seventh* above pleaded, do the like, &c.

Issue to the 8th plea.

And the said United States of America, as to the said plea of the said claimant by him *eighth* above pleaded, do the like, &c.

Issue to the 9th plea.

And the said United States of America, as to the said plea of the said claimant by him *ninth* above pleaded, do the like, &c.

Issue to the 10th plea.

And the said United States of America, as to the said plea of the said claimant by him *tenth* above pleaded, do the like, &c.

Issue to the 11th plea.

And the said United States of America, as to the said plea of the said complainant by him *eleventh* above pleaded, do the like, &c.

Issue to the 12th plea.

And the said United States of America, as to the said plea of the said claimant by him *twelfth* above pleaded, do the like, &c.

Therefore let a jury thereon appear before the court here immediately, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c.

Discontinuance of the 1st, 2d, 4th, and 5th counts of the information.

And thereupon, the said United States of America, by their attorney aforesaid, as to the said pleas of the said claimant to the first,

second, fourth, and fifth counts in the said information contained, say, that they cannot deny the pleas aforesaid made by the said claimant to the said first, second, fourth, and fifth counts in said information contained as aforesaid, and pray leave of the court here to discontinue the same, and to them it is granted.

Therefore, it is considered by the court here, that the said United States of America take nothing by their said first, second, fourth, and fifth counts in their said information contained against the said goods, wares, and merchandise; but shall be in mercy for their false allegations and causes of forfeiture in the said first, second, fourth, and fifth counts contained.

Whereupon, for trying the issues aforesaid, it is ordered by the court here, that twenty persons from the panel of petit jurors returned to the court here by the marshal for the Maryland district aforesaid, be drawn by ballot; and thereupon the twenty persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, thereupon the remaining twelve persons being called, come, to wit:

Jury—Verdict—Judgment.

Hugh Birckhead, William Ewin, Joshua Dryden, John Potter, John Robinson, Mark Grafton, Thomas Knighton, Joseph Robinson, James W. Barroll, John Hasson, Benedict J. Saunders, Charles W. Spilcker, who being impannelled and sworn to say the truth in the premises, upon their oath do say, that they find their verdict for the United States of America. Therefore, it is considered by the court here, that the said sixty-one pieces of cloths and cassimeres be, and the same are hereby, forfeited to the use of the said United States of America, for the causes of forfeiture in the said information set forth.

Memorandum.

Before the jurors aforesaid withdrew from the bar of the court here, the said claimant, by his attorney aforesaid, tendered to the court here the following bills of exception, which were by the court here signed and sealed, and which are in form following, to wit:

THE UNITED STATES
vs.
61 PIECES OF CLOTHS AND CASSIMERES. } Claimant's first exception.

Evidence of Samuel Riggs.

At the trial of this cause the United States, to support the issue on their part, proved by Samuel Riggs, a competent witness, that he had examined the goods in controversy, at the public stores at the custom-house in this city, in conjunction with Mr. Ricards;

that he examined, as did Mr. Ricards, every piece; that he examined them with a view to what would have been their sterling value, or cost in England, in the spring of 1839; that he is familiar with the quality and value of cloths—has been engaged in the business for about twenty-five years; came to Baltimore in 1816; between that and 1826 he imported some cloths; since the latter year he imported very largely, until within a few years past, when he retired, to a very great extent, from business, and his importations have been small comparatively; has partners in England.

Peabody is a partner, and remains in England to make purchases. He purchases for cash or good acceptances at short dates, that is, at three or four months. The discount usually allowed upon such acceptances is one and a half per cent.; it was formerly one and a quarter, now one and a half, usual allowance or deduction. Knows the usage; never knew a discount to be allowed for measurement on cassimeres, nor is any discount allowed now for measurement on cloths; never knew such discount allowed or made here or in New York since 1828 or 1829. He has been importing goods into New York for ten years—has had a house there for about nine years; is familiar with the usage in Baltimore. The cloths he examined are Yorkshire cloths. Cloths under ten shillings are low priced, from ten to fourteen shillings medium, all above high priced. Fine cloths of the best quality come usually from the west of England. Invoices to his house generally headed thus: Riggs & Peabody, bought of Peabody, or Dr. to Peabody, or Riggs & Peabody, bought of Carter, or of Brown. There may be other forms, but does not recollect seeing any other form; has seen other invoices, and presumes they were in the same form. Mr. Jenkins also engaged for his house for the last three or four years to make purchases abroad; this is his exclusive employment. Ricards [is] a good judge of goods; he and Ricards agreed in their judgment of the cost of these cloths; each would put down the amount he thought proper, and they would afterwards compare them; there was no compromise. They might have differed a little in some particular instances, but very little, perhaps sixpence or a shilling. The paper now exhibited contains the result of their judgment. They had no invoices before them when they examined and appraised these goods. Easy to distinguish the Yorkshire from the west of England cloths; these are Yorkshire cloths. List made by him and Ricards, with other lists made. When they first went down, Mr. Snyder read off the numbers; they compared the numbers on the cloths with those called out. Cloths always have numbers, which are never intentionally taken off; could not get along without them; if a piece [is] damaged, or is of short measure, or from other cause defective, these numbers enable us to trace them, and ascertain from whom we have got the piece; great advantage of these numbers; practice of his house invariably to leave numbers on.

Cross examination.

Upon cross examination, the witness stated, that when he and Ricards went to the public stores, Mr. Snyder showed the cloths generally—Mr. Young showed some—the former had a list. There was a list on the counter. No cassimeres in the list he observed. He buys in England of a number of merchants. Can't say how many. Has bought many goods of Brown. Does not recollect of latter years, any allowance of discount for measurement of cloths from Brown; formerly, prior to 1828, some discount made—but then it ceased. None was allowed at the foot of the invoice. Has heard that his partner, Peabody, had sometimes got an allowance or discount made for measurement on cloths, but never so invoiced them; he considered them as nett. It is not so very difficult to determine the value of cloths, to a person acquainted with the article. Good judges ought not to differ so much as 10 or 12 per cent. The standard which he had formed in his own mind, from observation and experience, he carried along with him throughout the whole of the examination of the cloths in question, and of others at the stores. Does not recollect Mr. Gibson and himself differing 15, 18, or 21, per cent. in valuing cloths at any time. He took the numbers from those on the pieces of cloths. Never looked at the invoices until after appraisement, and then as a matter of curiosity. Mr. Snyder removed it when he saw I looked at it once or twice. If I took off the numbers from [the] cloths, and retained it, it would prove it came from a particular piece, and I could then trace it, but it would be difficult and inconvenient. Pieces of cloths [are] not in all cases numbered consecutively—some are so, others are not. He can't say whether the numbers he finds on his cloths are the manufacturer's numbers or not, but he knows they are not the numbers put on them by the partner of the witness. Don't know whether they are the manufacturer's or the finisher's numbers.

Evidence of William Cairnes.

The United States, further to maintain the issues upon their part, offered in evidence, by William Cairnes, that he has been, since the year 1829, and still is, one of the inspectors in the custom-house in New York, and that the two invoices now shown to the witness, are invoices of goods imported by John Harris into the port of New York in 1838, and are the original invoices from the custom-house in New York, by the Pennsylvania, and entered 13th December, 1838.

(Here insert the invoices.)

That witness has examined said invoices, and finds none of the numbers therein corresponding with the list of the numbers now on the goods in question.

The counsel for the United States then offered in evidence to the jury the following notice, by the claimant to the plaintiffs, to pro-

duce invoices by the Pennsylvania, for the purpose, not of verifying the paper itself, but as one of the circumstances to show probable cause, and throw the burden of proof on the claimant.

Notice to produce invoices.

THE UNITED STATES,
vs.
61 PIECES OF CLOTHS AND CASSIMERES.

In the District Court of the United States for the district of Maryland.

Information.

The district attorney is required to produce, upon the trial of the above information, the several original invoices and entries of merchandise, with the permits for the same, imported by John Harris into the port of New York, according to the following list: showing the names of the vessels, and the times at about which the importations were respectively made; and also the books or records of the appraisers or assistant appraisers, showing what packages in each invoice were appraised.

1. The ship Pennsylvania entered November 2d, 1838.
2. Same same January 2d, 1839.

N. B.—The above goods were imported in the same ship, on the same voyage, but were entered at the custom-house at New York at different times, as above.

J. V. L. McMAHON,
ST. GEO. W. TEACKLE.
For Complainant.

N. WILLIAMS, Esq., *District Att'y U. S.*

To the admissibility of which evidence, the claimant by his counsel objected, but the court overruled said objection, and permitted the said notice to be read to the jury. To which admission of said testimony, the claimant by his counsel prayed leave to except, and that the court would sign and seal this bill of exception, which is accordingly done, this 23d day of September, 1840.

U. S. HEATH, [L. S.]

THE UNITED STATES,
vs.
61 PIECES OF CLOTHS AND CASSIMERES,
JOHN HARRIS, claimant.
} Claimant's 2d exception.

Evidence of Wm. Cairnes.

The United States, in addition to the matters stated in the first exception, and which are made a part of this exception, further to support the issues on their part, gave in evidence, by the said William Cairnes, that the heading of the two invoices of goods imported by the claimant in the ship Pennsylvania, as inserted in the first

exception, is unusual, where the importer is owner or purchaser; that woollen goods imported into New York, are inspected in the woollen loft in the custom house at that place; that he has been employed since May, 1829, in the general examination of goods, their quality and value, and of the invoices by which they are imported; that since July, 1839, he has been employed in the woollen loft; that he was employed in said loft for four or five years preceding 1835, when he left it, and returned again in 1839; that he has been for a long time familiar with woollens, and was an importer of that article for a number of years; that when he returned to the loft in 1839, he considered the standard of value of British cloths and cassimeres too low, and that at his suggestion upon consultation with the appraisers, the standard was raised from 10 to 12½ per cent., that the standard was raised after an examination of the invoices of several of the regular importers of New York.

Cross Examination.

The witness, upon cross examination, by claimant's counsel, stated that he had known Harris, the claimant, pretty much since he (the witness) has been in the custom house; that Harris has never been a very extensive importer, and since 1839 a small importer; that he does not recollect any instance in which Harris's goods were put up, or raised above the invoice; that until the last six months or year, invoices of English broadcloths, very generally, come in with an allowance of five per cent. for measure, upon the foot of the invoice, that this was always allowed by the custom house until the summer of 1839, when the appraisers were instructed by the collector to strike it from the invoice and disallow it; that he knows of no instance of any seizure on account of such deduction for measurement on the invoice, nor would he consider it a sufficient cause for seizure; that the standard of which the witness has spoken was reduced in 1840 about 10 per cent., cloths having fallen in price in England about that amount; that he knows Mr. Loundsberry, one of the assistant appraisers in the custom house in New York, and considers him a fair judge of cloths, though he has seen better judges of low priced goods—by a fair judge, witness means one upon whose judgment reliance may be had; that the witness, with George A. Wasson, a deputy collector in the New York custom house, came to Baltimore last winter at the request of the district attorney of Maryland, and together examined and appraised in the public stores all the goods then under seizure.

Witness further stated, that Yorkshire cloths have a better appearance than west of England cloths at the same price; that it requires great skill and practice to become perfect in judging cloths, and that between good judges there is sometimes a difference of from five to ten per cent. upon the foreign cost of cloths; that for the last two years there has been a great diminution in the importation of woollens.

Evidence of Geo. A. Wasson.

And the United States, further to support the issues upon their part, gave in evidence, by George A. Wasson, one of the deputy collectors in the New York custom house, that the duties upon the two invoices by the Pennsylvania, herein before referred to, were paid on the 2d of November, 1838, and 3d January, 1839; that the heading of said invoices is not the usual heading where the owner's oath is taken, and that he is not aware that he ever before saw any other invoices headed in that way, except the claimant's.

Cross examination.

And the witness, upon cross examination, stated, that notwithstanding such heading, which probably attracted the notice of the officers, the invoices were past the custom house; that the invoice demanded in the case of purchased goods, is the original invoice received from the vendor.

Evidence of Alex. Young.

And the United States, further to support the issues on their part, gave in evidence, by Mr. Young, a clerk to the appraisers in the custom house at Baltimore, that he has examined the invoice costs of the goods in question, and the appraisement of Riggs and Ricards above referred to, and has calculated the average excess of said appraisement over and above said invoices, which calculation in writing the witness produced, and read to the jury, which is as follows:

(Here insert it.)

And the United States, further to support the issues upon their part, read in evidence the following deposition of John R. Ricards, and the appraisement thereunto appended, which is the same appraisement herein before referred to, and made a *a* part of the first exception.

UNITED STATES OF AMERICA, *district of Maryland, to wit:*

Be it remembered, that on this 21st day of July, 1840, at the city of Baltimore, in the district aforesaid, before me, James Mason Campbell, a commissioner, appointed by the Circuit Court of the United States in and for the fourth circuit and district of Maryland, under and by virtue of an act of Congress, entitled "an act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," personally appeared John R. Ricards, a witness for the United States, in a certain information now depending in the District Court of the United States for the district aforesaid, and filed by the said United States, against 61 pieces of cloth, &c., and of which said cloths, a certain John Harris is claimant.

Deposition of John R. Ricards.

And the said witness being by me first carefully examined, and cautioned, and sworn to testify the whole truth, deposeth and saith:

That he is aged 35 years or thereabouts, and is engaged in commerce in the city of Baltimore, having been from February, 1836, a partner in the drygoods importing and jobbing house of Ricards, Betts and Company, and from August, 1836, a partner of the importing and commission house of Hoffmans and Company, but that for the principal part of the last four years he has resided in England, where his business was the soliciting of consignments and making purchases of dry goods for the houses of which he was a partner, and occasionally buying for other American houses; and that he purposes re-visiting England by the British Queen steam packet of the 1st of August next from New York, to remain there probably eighteen months or two years.

That for twenty years past, and particularly for the last fifteen years, he has been acquainted with dry goods, including cloths and cassimeres; that during his residence in England, as already stated, his chief business, in addition to occasional purchases for other houses, was the soliciting of consignments, and making purchases, principally the latter, for the house of Hoffmans & Co., and purchasing only for the house of Ricards, Betts and Company; that his purchases of woollens in 1839, amounted to sixty thousand pounds or thereabouts, and were mostly made in the months of January and February, in that year; that in the course of his business, he visited the cloth-halls of Yorkshire, at Leeds and Huddersfield, and various other manufactories of cloths and cassimeres in Yorkshire, of which he recollects at present the following, (though he has also been at others which he cannot now remember,) to wit: J. Overends, J. Webster and Sons, and N. Webster and Sons, at Mosley, and Pimm, Nevins and Company, at Leeds; that the only purchases he made of broad cloths, were at the manufactory of Brown & Co., and were exclusively for the house of Ricards, Betts and Company; that from the other manufacturers he has named, he solicited, and from two of them, to wit, J. Overends and N. Webster and Sons, he obtained consignments for the house of Hoffmans & Co.; that his purchases of beaver cloths, pilot cloths, flushings, cassimeres, and all other descriptions of woollen goods, except broad cloths and blankets, for both Ricards, Betts & Co., and Hoffmans & Co., were made through commission houses, and that his course in making them was to apply to several of such houses for such descriptions of goods as he wanted, at their lowest prices; upon which, each of them furnished him with an assortment obtained from the various manufacturers for whom they acted. That he never purchased or solicited consignments of cloths and cassimeres in any part of England except in Yorkshire, and on no occasion in Saddleworth, unless Mosley, Leeds, or Huddersfield, may be

in that district, which he thinks they are not considered to be, in England. That he considers himself to be a good judge of cloths and cassimeres; that his purchases of them were made for cash, or good acceptances at 3 or 4 months, of first rate houses, (as for instance, of the Browns, Fletcher, Alexander & Co., or others of equal standing;) that when he paid cash, a discount of $1\frac{1}{4}$ per cent. was allowed him, when by a 3 or 4 month's bill he paid the nett price without discount; and added one month's interest, at the rate of 5 per cent. per annum, when he paid by a four month's bill; that he never was allowed himself, and does not know of any allowance to any other person, of more than $1\frac{1}{4}$ per cent. for cash; that except on broad cloths, he never was allowed, or offered an allowance, of discount for measurement, and never on broad cloths had any such allowance; that, on one occasion, Brown & Co. offered to invoice him broad cloths at certain prices, with a discount of 5 per cent. from the foot of the invoice, or to charge them at other prices, with a discount of $1\frac{1}{4}$ per cent for cash, but that he did not accept the first branch of the alternative; that he never was allowed himself, and does not know of any allowance to any other person, for measurement on cassimeres; that the custom, so far as he knows, has been to make up the invoices of cloths and cassimeres from the tags or leads on the ends of the pieces, and that both the houses of Ricards, Betts & Co., and Hoffmans & Co., are in the habit of keeping on the original tags or leads; the advantage of so doing being, that they are thereby enabled exactly to describe a particular piece, if they wish to claim any allowance for defect, or desire to order similar goods. That in connexion with Samuel Riggs, of the city of Baltimore, he made the appraisement which he herewith exhibits, of 59 pieces of cloth, marked J. R. R.; that it was done in the month of July, 1840, with a good light, and under circumstances favorable to the exercise of their judgment, and without seeing the original invoices, or knowing the prices contained in them; that the appraisement is made at the prices in sterling [money,] at which he believes he could have purchased the cloths in Yorkshire, in the fall of 1838, and spring of 1839; that between the prices at those periods, there was a difference of about 5 per cent. in favor of the spring of 1839, and that the appraisement approximates an average rather inclining to the prices of the period last named, as his own purchases were greater then than in the preceding autumn; and that to assist his judgment, he examined, while making the appraisement, other cloths and cassimeres in the city of Baltimore, which he had himself purchased in the fall of 1838, and spring of 1839. That the consignments to Hoffmans & Co. of woollens, including cloths and cassimeres, have been direct from the manufacturers, and their results for the last two years have not been encouraging to the consignors; that he does not know the average profit of the English woollen manufacturer; that in the English market there is a competition between buyers for the home, and buyers for the foreign

trade; and by means of the large demand, the prices are kept pretty uniform, much more so than in this country. That there is very little difference in the prices between the large and small manufacturers, and comparing the highest prices asked him by those who held their goods highest, with the lowest of those who asked least, when making his purchases through commission houses, as before described, the greatest difference he remembers did not exceed 12½ per cent.; that the general character of the 59 pieces of cloths, appraised by himself and Mr. Riggs, is good in style and manufacture.

Here the examination in chief closed.

Cross examination.

That the necessary advance on the sterling cost, to cover costs and charges, and pay about 5 per cent. profit on woollen goods, is about 80 per cent.; but that advance will not pay profit, if the goods are sold here through a commission house. That the appraisement, made by himself and Mr. Riggs, is the average of their judgments; that in many cases they concurred exactly, and the greatest difference between them did not exceed one shilling per yard, and that in the finer qualities of broad cloths; that he thinks two first rate judges, appraising the finer qualities of broad cloths, embraced in the appraisement in this case, might vary from 12 to 18 per cent. [per] yard, in the medium cloths might differ about 12½ per cent., and in the low priced from 10 to 12 per cent.; that he considers the goods appraised by him at 14 shillings and upwards, high priced for Yorkshire cloths; those appraised at from nine shillings and sixpence and upwards to 14 shillings, as medium; and those at from nine shillings and sixpence downwards, low priced. That before he went to England, he was in the almost daily habit of handling cloths for 8 months in the year; that while there, he had not so many opportunities of examining them, and his judgment was in consequence less practised; but that he believes it to have been as good in every instance where he exercised it, either in purchasing or obtaining consignments, as it ever had been at any former period; that when he made the appraisement in this case, he considered his judgment, from the attentive examination he made, both of the cloths appraised and others, to have been [as] good as it ever was in his life; and that his judgment was founded on the prices he was asked or paid for goods, either offered to or purchased by him in the fall of 1838, and spring of 1839.

Memorandum.—The whole of the evidence on cross examination which follows, and is included in brackets, was objected to on the part of the United States.

[That, in conjunction with Mr. Riggs, he did appraise at their sterling cost, as of the fall of 1838 and spring of 1839, certain cloths and cassimeres which had been seized in the city of Baltimore by the United States, and were claimed by a certain Henry Dixon, and gave the result of that appraisement in writing either to Mr.

Young, clerk to the custom house appraisers, or to Mr. Snyder, keeper of the public store. That he was as good a judge then, as when he appraised the goods in this case. That he does not remember the greatest difference between Mr. Riggs and himself in making this last mentioned appraisement, nor does he know how much their appraisement exceeded the invoice.]

That of the woollen goods which he mentioned in his direct examination, as purchased by him in January or February, 1839, a part of which had been bought for Hoffmans & Co., amounting to about from 20 to 25 thousand pounds, were sold either at public or private sale, and principally by auction, as his partners in that house have informed him; and that the result of that importation prevented his purchasing any more woollens in 1839, with the exception of some fancy cassimeres of a style entirely different from any of those which he bought in January or February of that year. That in England the prices of cloths and cassimeres do not fluctuate much in any one season. That, in his judgment, prices depend upon the supply and demand. That he pays the commission house, through whom he buys all his woollens, (except broadcloths and blankets,) from $1\frac{1}{4}$ to $2\frac{1}{2}$ per cent.

Here the cross examination closed.

After which the deponent, to explain that part of his deposition in chief which relates to the circumstances attending the appraisement made by him, and the result of which he has made part of his testimony in this case, further saith: That there was a paper containing prices lying on a table in the room where Mr. Riggs and himself made their appraisement, which paper, he understood from Mr. Riggs, was the appraisement made in this city by the New York appraisers, of the same goods which they were then examining. That in three or four instances, Mr. Riggs, after both had made and written down their judgment, consulted the paper, and in one instance showed it to deponent, but that it had no effect on his judgment, and he believes none on that of Mr. Riggs.

JN. R. RICARDS.

UNITED STATES OF AMERICA,
District of Maryland, to wit:

I, James Mason Campbell, a commissioner appointed by the circuit court of the United States, in and for the fourth circuit and district of Maryland, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify, that the reason for taking the deposition hereunto annexed, of John R. Ricards, is, that the said witness is about to leave the district of Maryland, on or about the 1st August, 1840, for England, to remain there probably eighteen months or two years.

I do further certify, that a notice of the time and place of taking said deposition was given to St. George W. Teackle, esquire, attor-

ney for the claimant of the goods, wares, and merchandise described in the information mentioned in the caption of the accompanying deposition, and that he attended accordingly.

I do further certify, that I am not of counsel or attorney to either of the parties in the information in the caption of said deposition mentioned, nor interested in the event thereof; that the said deposition was reduced to writing by me, and thereafter subscribed by the said deponent in my presence.

In testimony whereof, I have hereunto set my hand and seal, this 23d day of July, 1840, at the city of Baltimore, in the district aforesaid.

JAMES MASON CAMPBELL, [L. S.]
Commissioner.

Exhibit J. R. R., referred to in the deposition.

JOHN HARRIS—Claimant, 61 ps.

Nos.					[yds.]	[s. d.]
4798	1 ps.	super	black	cloth	24¾	13 0
4799	1 ps.	do	do	do	23¼	13 0
4800	1 ps.	super	black	cloth	24	12 0
4801	1 ps.	do	do	do	24¾	12 0
4853	1 ps.	super	blue	cloth	24¼	14 0
4806	1 ps.	super	black	cloth	23½	14 0
4807	1 ps.	do	do	do	23	14 0
4808	1 ps.	do	do	do	24½	14 0
4809	1 ps.	do	do	do	22¾	14 0
4810	1 ps.	do	do	do	23¼	14 0
4811	1 ps.	do	do	do	23¼	14 0
4812	1 ps.	do	do	do	23¼	14 0
4813	1 ps.	do	do	do	22	14 0
4814	1 ps.	do	do	do	22	14 0
4815	1 ps.	do	do	do	23¾	14 0
4816	1 ps.	do	do	do	24¼	14 0
4817	1 ps.	do	do	do	23¼	14 0
4818	1 ps.	do	do	do	23	14 0
4819	1 ps.	do	do	do	24½	14 0
4778	1 ps.	do	do	do	23½	14 0
4779	1 ps.	do	do	do	23¾	14 0
4780	1 ps.	do	do	do	25	14 0
4781	1 ps.	do	do	do	24	14 0
4782	1 ps.	do	do	do	24	14 0
4783	1 ps.	do	do	do	23¼	14 0
4784	1 ps.	do	do	do	23¼	14 0
4785	1 ps.	do	do	do	20¾	14 0
4786	1 ps.	do	do	do	23	14 0
4787	1 ps.	do	do	do	24½	14 0
4788	1 ps.	do	do	do	23¼	14 0

EXHIBIT—Continued.

Nos.		[yds.]	[s. d.]
4789	1 ps. super black cloth - - - -	23½	14 0
4790	1 ps. do do do - - - -	23½	14 0
4791	1 ps. do do do - - - -	24	14 0
4840	1 ps. do blue do - - - -	23½	15 0
4841	1 ps. do do do - - - -	23¼	15 0
4842	1 ps. do do do - - - -	23	15 0
4843	1 ps. do do do - - - -	23¾	15 0
4761	1 ps. do black do - - - -	24	12 0
4762	1 ps. do do do - - - -	23	12 0
4763	1 ps. do do do - - - -	24	12 0
4739	1 ps. green forest cloth, ¾ wide - - -	29¾	4 0
4740	1 ps. do do do do - - -	30	4 0
4463	- - (not found) - - - -	–	– –
4464	1 ps. W. D. green beaver cloth - - -	20	11 9
4465	1 ps. do do do do - - -	25½	12 3
4465	- - (not found) - - - -	–	– –
4466	1 ps. W. D. green beaver cloth - - -	23¼	12 3
4467	1 ps. do do do do - - -	20½	12 3
4468	1 ps. do do do do - - -	20¼	12 3
4469	1 ps. do do do do - - -	23½	12 3
4470	1 ps. do do do do - - -	20	12 3
4471	1 ps. do do do do - - -	21	12 3
4472	1 ps. do black do do - - -	19¾	11 9
4473	1 ps. do do do do - - -	20¾	11 9
4474	1 ps. do do do do - - -	20½	11 9
4475	1 ps. do do do do - - -	22½	11 9
4476	1 ps. do do do do - - -	19¾	11 9
4477	1 ps. do do do do - - -	19¾	13 6
4478	1 ps. do do do do - - -	22	13 6
4479	1 ps. do do do do - - -	21¼	13 6
4480	1 ps. do do do do - - -	21½	13 6

SAMUEL RIGGS,
JNO. R. RICARDS.

Endorsed—In the district court of the United States in and for the district of Maryland. The United States *vs.* 61 pieces cloth, &c., John Harris, claimant. J. R. R. Filed with me by John R. Ricards.

Witness: J. M. CAMPBELL,
Commissioner.

Evidence of H. T. Jenkins.

And the United States, further to support the issues upon their part, gave in evidence, by Henry T. Jenkins, that he is a partner

in the house of Peabody, Riggs & Co., and that he has had eleven years' constant experience in dry goods. That he went to Europe as a clerk for a Boston house in 1835, 1836, and part of 1837, and that his purchases were extensive. That he became a partner of Peabody, Riggs & Co. on the first of January, 1840, was first employed by them in July, 1837, and has continued since to make purchases for them in England; that he was in England from August, 1837, to March, 1838, when he returned to this country, and remained here till the first of October, 1838; that he then returned to England, where he remained to the 6th July, 1839; that he again returned to this country, and after staying a short time, went back to England, which he left for the United States on the fourth of July, 1840; that he is in the habit of making his purchases from commission houses and manufacturers direct, after thorough examination; that in several instances he has bought directly from the manufacturers, sometimes for nett cash, and sometimes on three months' credit; that a good bill at three months is considered the same as cash; taking off 1¼ per cent. discount for three months is considered as cash, and frequently preferred. That broadcloths are generally purchased in Leeds, sometimes in London, but principally in Yorkshire; that witness has purchased very little in London, and never purchased broadcloths in Huddersfield, nor in Saddleworth, as it would have been against his interest to do so, as the manufacturers of that district principally supply the market of the United States. That he always selects finished cloths according to his own judgment; where the cloths are in an unfinished state he relies upon the judgment of his commission house, he being no judge of cloths in an unfinished state; that for the last three seasons his purchases of broadcloths have turned out badly; that he has purchased cloths in an unfinished state, and had them finished, to see if anything could be gained by it, and found no advantage from it. That Peabody, Riggs & Co. have lost by their importations of broadcloths for the last three seasons, both of finished and unfinished cloths; that he thinks no one could have purchased cloths in Yorkshire cheaper than he did; that in October and November, 1838, he made purchases in Yorkshire, which goods arrived from the middle of January to the middle of February, 1839. That they were not purchased till he had gone thoroughly through the market; that the prices of said goods ranged from 8s. 6d. to 12s., and resulted unprofitably; that from 1837 to 1838 purchases resulted in some profit; from October, 1838, to this time, there has been no profit. That the two invoices by the Pennsylvania, hereinbefore referred to, are not headed as is customary where goods are puchased; that the usual heading is, to make the parties purchasing debtors to the parties from whom the goods are bought; that he never knew an instance where goods *where goods* were purchased, the invoices of which were headed, "shipped to order." That he never obtains a discount for measurement in cloths; that he knows

nothing of such a discount since he has been a purchaser. That cloths are invoiced at their exact measurement, and are sold here in the same way. That the numbers are attached by the persons who make up the goods, and are always kept on, and never knew an instance in which they were changed. That the money market in England in 1838 was not easy, but the pressure less in that year than in 1837; that there was a greater pressure in the latter part of 1839. That from August to October, 1838, the prices of cloths did not vary, but that the prices in that year were lower than in 1837. That to make a fair profit, from seventy to seventy-five per cent. must be added to the invoice cost. That it would require seventy per cent. now to cover expenses, giving no profit, the duties now being thirty-eight per cent. ad valorem; that when the duties were forty-one per cent., as they were in 1838, it required an advance of seventy-three per cent. to cover expenses. That he has found no difference in purchasing large or small quantities of cloths; that one hundred pieces can be purchased for cash at as low a rate as one thousand pieces; that generally the prices of cloths are uniform, and no great fluctuation in prices. That there is an allowance on measure on purchases made in England of one inch to the yard, and allow the same here. That the importations of Peabody, Riggs & Co. for the last two years diminished; that they imported this year only three packages, which they cannot sell without a loss. That they tried to sell them but could not sell them without a loss.

Cross-examination.

The witness, upon cross-examination, stated that he does not consider the importer, where he is the purchaser of cloths, as bound to produce at the custom-house the original invoice which he receives from the vendor or manufacturer. That in 1835 there was no discount for measure on broadcloths; the only allowance made is one inch to the yard. That there are great fluctuations in the prices of broadcloths between one year and another; there was a difference in prices between the spring of 1838 and the spring of 1839, of fifteen per cent.; they were lower in 1839 than in 1838, and five per cent. lower in 1840 than in 1839. That the importations of woollens by American merchants have much diminished within the last year, and witness believes that not more than one-sixth as much is now imported by them as formerly. That the cloths he bought, ranging from 8s. 6d. to 12s., were blues, blacks, &c.

Evidence of Andrew Aldridge.

The United States, further to maintain the issues upon their part, gave in evidence, by Andrew Aldridge, that he had been in the habit of importing cloths for the last eighteen years; that for the last three or four years his importations have been very small, and merely by way of trial, as latterly he could make no profit, getting

only costs and charges; that his last importation was twelve or eighteen months ago, except a small one this fall, on neither of which did he make any profit; that he purchased in England, by bills upon Browns' house, and pays a commission of 2½ per cent. to the commission house through which he purchases; that until the last three or four years he made a fair profit on his cloths, and imported tolerably largely.

Cross examination.

The witness, upon cross examination, stated, that his average importations for two or three years past has not exceeded two or three packages—formerly he imported about twelve packages; that his last importation of two packages was sold at private sale, on a long credit, for which he only got cost and charges; that the cloths which he imports cost about 9 or 10 shillings per yard; that he never got Saddleworth cloths, but gets all his cloths from Brown's house.

Evidence of Wm. H. Hoffman.

And the United States, further to maintain the issues upon their part, gave in evidence, by William Henry Hoffman, that since the year 1835 he has made three importations of cloths and cassimeres, varying from three to five packages at each importation; that he has not imported any cloths since 1839; that each of said importations resulted in a loss; some were sold at private sale, at a small gain, but those sold at auction always at a loss; that some of these goods were purchased abroad by a commission agent, and some by the agent [of] witness's firm; that the commission agents were Cross & Stell, who are persons of good character, and have houses in Leeds and Huddersfield, and who received a commission of 2½ per cent.; that the losses upon the importation spoken of above, was owing to the great supply at auction sales, and the low rates at which they were then sold.

Evidence of Joseph Todhunter.

And the United States further offered in evidence, by Joseph Todhunter, that he has been an importer of British goods for the last thirty years; that for the last few years he has not imported cloths, except occasionally a few in the last three or four years; that he has had consignments of cloths, which were not however repeated in consequence of bad sales; that said sales of consigned cloths were guarantied by witness.

Cross examination.

On his cross examination the witness stated, that the domestic manufactures of cloth have increased rapidly for a few years past; that there have been a great quantity of domestic cloths and cassimeres in this market; that the auction houses in this city have been crowded for the last few years with British cloths; that the importer of British cloths is not interfered with by domestic manufactures,

they being a cheaper kind of goods. The fine domestic cloths have been driven out of the market.

And the claimant, to support the issues on his part, offered in evidence by William M. Gibson, that he *is* a partner in the house of John Gibson & Co. for a number of years; that his house has been, and still is, extensively engaged in the importation of British cloths and cassimeres; that the witness has chiefly attended to the sales; and considers himself a good judge of cloths.

And the claimant, for the purpose of shewing that there is great difficulty and uncertainty in ascertaining by inspection and examination the actual foreign cost of British cloths and cassimeres, and that between competent and experienced judges considerable differences of valuation may occur, offered to prove by said Gibson, that some time in the month of June last, he was called on to examine certain cloths and cassimeres then in the public stores under seizure, claimed by a certain John Taylor, jun'r, which had been examined and appraised by a certain Richard Bell and Samuel Riggs; that witness examined and appraised ten pieces only, and that his appraisement differed from the said appraisement of Bell and Riggs as follows.

To the production of the paper referred to in the claimant's question to the witness, as also the giving in evidence the particulars of an appraisement of the goods claimed by John Taylor, junior, in another case—to the admissibility of which evidence the counsel of the United States objected, and the court sustained the objection, and rejected the testimony. Whereupon the claimant, by his counsel prayed leave to except, and that the court here would sign and seal this his objection; which is accordingly done this 23d day of September, in the year 1840.

U. S. HEATH. [SEAL.]

Claimant's 3d exception.

THE UNITED STATES, vs. 61 PIECES OF CLOTHS AND CASSIMERES—JOHN HARRIS, claimant. } Claimant's 3d exception.

In addition to the matters stated in the first and second exceptions, which are hereby made a part of this exception, the claimant, further to maintain the issues on his part, gave in evidence, by the said William M. Gibson, that good judges of British cloths and cassimeres will often differ with regard to the foreign cost. That in medium priced cloths, say from 10 to 14 shillings per yard, 15 per cent. would be a material difference, and in high priced cloths 20 per cent.; that witness has known such instances, and, in speaking of them, he means that the judges have the same light and same advantages.

Evidence of Wm. P. Stewart.

And the claimant, further to maintain the issues on his part, offered in evidence by William P. Stewart, that he is a merchant of

this city, and since 1825 has been engaged in buying and selling British dry goods—for a part of that time very extensively; that he considers himself a good judge of cloths and cassimeres, and in his purchases relies entirely on his own judgment; that he was called upon within the last four days to appraise fifty-eight pieces of cloths in the public store, which were shown to him by one of the store-keepers as being under seizure, and claimed by John Harris; that he examined them in conjunction with Thomas G. Pitts; that they examined only the head ends of them—not more than a yard or two in any one piece; that they appraised each piece, and that the paper now shewn to the witness is in his handwriting, and is the original memorandum of said appraisement.

(Here insert it.)

Cross examination.

And being cross examined, said witness stated he is not an importer of cloths and cassimeres, nor does he know of his own knowledge the sterling cost of such goods; that he buys principally at auction; that the differences in prices between auction and private sales is such as to prevent him from buying at private sale; that the appraisement of the said Pitts and witness is in the currency of this country, and the prices are the prices of the present time; that they were regulated by auction sales; that some descriptions of British broadcloths have fallen within the last year; that piece-dyed black cloths, which constitute a part of the goods in question, have not fallen, but now command the same price they did 18 months since; that with regard to Beaver cloths there has been a decline of 20 per cent., and as to Forest cloths witness does not know whether they have fallen or not; that for the last three or four years there has been a difference of 15 per cent. on medium cloths between auction and private sales.

Evidence of T. G. Pitts.

And the claimant, further to support the issues on his part, offered in evidence, by Thomas G. Pitts, that he has been engaged in the dry goods business upwards of 10 years; that he has purchased a good many cloths and cassimeres, principally at auction, but never imported any; that he considers himself a good judge, and buys upon his own judgment; that he examined the cloths in question, with William P. Stewart, and that the list made out by Stewart, and herein before referred to, is the result of their appraisement.

Evidence of John Brown.

And the claimant, further to maintain the issues on his part, gave in evidence, by John Brown, that he has examined carefully the calculations contained in a paper then shown to him, and found said calculations to be correct; which said paper was read in evidence to the jury by the counsel for the claimant, and is as follows.

(Here insert it.)

And the claimant, further to maintain the issues on his part, gave in evidence, by John Patterson, that until within the last three or four years, he was in the habit of importing English cloths; that during the time he imported, it was the usage to allow 5 per cent. for measure; that it is a very difficult matter to judge correctly of the foreign cost of broadcloths; that in high priced cloths he has known a difference of 20 to 30 per cent. between judges, and in medium cloths a difference of 12 to 20 per cent., and in low priced cloths 10 to 15 per cent.; that he never imported Yorkshire cloths, but generally buys them at the auction; that Yorkshire cloths are generally well dressed, but when sponged and washed up, they lose their shape and dye; that they are inferior to west of England cloths, there being a great difference between the two in width, dye, and durability; that Yorkshire cloths have a better appearance than west of England at the same price.

Evidence of Henry Wilson.

And the claimant, further to maintain the issues on his part, gave in evidence, by Henry Wilson, that he is a clerk of John Harris, the claimant, and has been so for more than eight years; and as such clerk he has access to the books of said Harris, and a knowledge of his general business; that he first knew Mr. Harris when he went to live with him; that Harris is an importer of cloths and cassimeres in the city of New York, and makes his purchases abroad; that since witness has been in his employ, his only agent for purchases in England, has been a person by the name of Charlesworth, who is a finisher of cloths, and buys the cloths which he sends to Harris in an unfinished state—he, Charlesworth, finishing them on Harris's account; that all the invoices of cloths sent by Charlesworth to Harris since witness has been in his employment, have been headed in the same manner as the two invoices by the Pennsylvania herein before referred to; that Charlesworth charges 10 per cent. on the amount of the unfinished cloths as a compensation for his agency in purchasing, and for his profit upon finishing; that the said Charlesworth buys as he can find unfinished goods in the market, and generally in small parcels; that Harris's importations of late years have declined, and have not been so large as formerly; that Harris makes remittances from time to time to Charlesworth, on account of his purchases, in bills of exchange, say 3,000 or £4,000 sterling at a time; that the two invoices by the Pennsylvania before referred to, he believes were made up by Charlesworth's clerk, and that the cost of the goods comprised in said two invoices, he believes to have been the actual cost—he has seen none other; he recollects the receipt of the goods described in said two invoices, they were passed through the custom house and delivered to Harris; the original packages containing said goods were broken up, and

some were shipped to Philadelphia, and some to Baltimore; that it is the usage and habit of Harris, as soon as goods are received, to take off the original numbers and put on progressive numbers; that this was the practice of said Harris at the time witness first went to live with him, and has continued to be the practice ever since, without any deviation; that the reason for said change of numbers is one of convenience; that when accounts of sales are made out, the goods can by that means be more easily checked off; that it often happens that the same original numbers are contained in different invoices, and unless progressive numbers are used, that circumstance would lead to confusion; that witness took off the original numbers from the goods in question, and put on progressive numbers.

Cross examination.

And the said witness, upon cross examination, stated that he was born in England, but to his knowledge has never been in Yorkshire, and that he was twenty-five years of age on the 26th August, 1840.

Direct examination.

That he never recollects an instance in which any one of Harris's importations were put up; that Harris never imports unfinished cloths, but that they are always finished by Charlesworth.

Whereupon the claimant, by his counsel, prayed the opinion of the court, and instructions to the jury.

Claimant's prayers.

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} Claimant's prayers.

1. The claimant, by his counsel, prays the court to instruct the jury, that under a true construction of the 71st section of the act of Congress of the 2d March, 1799, it is incumbent on the United States to show by evidence a seizure in pursuance of said act, or of other acts if any, regulating seizures, and that, in the absence of such evidence, the onus probandi cannot be thrown upon the claimant by proof of probable cause—proof of probable cause of such seizure being made by said section a prerequisite which must be complied with.

2. That upon the evidence offered by the United States in this cause, the onus probandi does not lie upon the claimant, under the provisions of the said 71st section of the act of 1799; because no probable cause has been shewn to the court for the prosecution in this case.

3. If the jury believe, from the evidence, that the goods mentioned in the third count of the information were entered in the office of the collector of the collection district of New York, in the

southern district of New York, and were unladen and delivered from the vessels in which they were imported, under permits granted by said collector, who caused the said goods, wares, and merchandise to be examined; and that, after such examination, the duties on the same were ascertained and estimated by said collector, and paid by the said claimant, and the said goods were by the authority of the collector delivered to the said claimant; and if the jury further believe, that the claimant caused the original packages in which said goods were imported to be broken up, and shipped said goods forming a part of said packages to his agents in Baltimore for sale, and that said goods were seized after their actual arrival in Baltimore, and not before—that the United States are not entitled to recover under the third count of the information.

4. That the United States are not entitled to recover under the said third count of the information, because the 66th section of the act of Congress passed on the 2d March, 1799, entitled "An act to regulate the collection of duties on imports and tonnage," was not in force when the goods mentioned in the said third count were imported.

5. That if the jury believe, from the evidence, that the collector of the port of New York caused at least one package out of every invoice, and one package at least out of every twenty packages of each invoice, containing the goods mentioned in the 6th and 7th counts of the information, to be opened and examined, and that said packages were, before such examination, designated on the several invoices in which they were respectively included, and that said collector did not deem it necessary that a greater number of packages than those so designated should be opened and examined; and if the jury further believe, that upon such opening and examination the said goods were in the judgment of the examining officers found to correspond with said invoices, and not to be falsely charged in said invoices, and that after said examination the duties on said goods were ascertained and estimated by said collector, and paid by the claimant, and said goods were delivered to the claimant, who afterwards sent them to his agents in Baltimore for sale, and that the seizure on which said information is founded was made after said goods had arrived in Baltimore—that then the said United States are not entitled to recover under the said 6th count, so far as the same charges the invoices to have been found to be made up with intent, by a false valuation or extension, to evade or defraud the revenue of the United States; nor under the said 7th count.

6. That there is no evidence in the cause from which the jury can find that the packages in which the goods mentioned in the 6th and 8th counts of the information were imported into New York were found, upon examination, to be made up with intent to evade and defraud the revenue of the United States; and that, therefore, the United States are not entitled to recover under said 8th count,

nor under said 7th count, so far as the same charges the packages to be made up with such fraudulent intent.

7. That the United States are not entitled to recover upon either of the said 6th, 7th, and 8th counts of said information, because the 4th section of the act of Congress passed on the 28th May, 1830, entitled "An act for the more effectual collection of the impost duties," was not in force when the goods mentioned in the said 6th, 7th, and 8th counts were imported.

8. That there is no evidence in the cause from which the jury can find that the packages, or either of them, in which the goods mentioned in the 9th count of the information were imported, were opened and examined at the district of Maryland on the day mentioned in said count, or at any other time, and were found to be made up with intent to evade or defraud the revenue; and that, therefore, the United States are not entitled to recover upon said 9th count.

Which instructions the court refused to give; but gave the jury the following instructions:

District Court United States, September term, 1840.

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Court's instructions.

The United States, by their counsel, pray the court for its opinion and direction to the jury:

1. That the issues which the jury are sworn to try, involve no question, except upon the causes of forfeiture alleged and traversed. Therefore no question relating to the seizure of the goods is in issue, or in any respect material upon the pleadings in this case.

2. That if the jury find, from the evidence in this cause, that the invoices which contain the goods now in controversy were made up with an intent to evade or defraud the revenue of the United States, the United States are entitled to condemnation of the said goods, although the jury should also find from the evidence that the said goods have passed through the custom-house at New York, by the collector thereof, or by the appraisers or other officers of the customs, and the duties calculated thereon be paid or secured to be paid, and the said goods delivered by the said collector to the importer.

3. That there has been shewn, on the part of the United States, probable cause for the prosecution under the 3d, 6th, 7th, 8th, and 9th counts of the information; and therefore, under the 71st section of the act of the 2d March, 1799, the burden of proof lies upon John Harris, the claimant; and it is incumbent on him to prove to the jury that the charges in the said five counts of the information

are untrue—that is, to prove that the goods in question were invoiced according to their actual cost at the place of exportation, and that the entries and packages were not made up with intent to evade or defraud the revenue.

4. The burden of proof being upon the claimant to prove that the invoices were not made up with intent to defraud the revenue, that it is not sufficient for him to rely upon the invoices merely as proving their truth and fairness.

5. The burden of proof being upon the claimant, it is incumbent on him to prove to the jury the actual costs of the goods in question, and that he does not relieve himself of this burden of proof by evidence of the mere value of said goods, except so far as such value may tend to show actual cost.

Whereupon, the claimant prayed leave to except, and that the court would sign and seal this his exception, which is done accordingly, this 23d day of September, 1840.

U. S. HEATH, [L. S.]

Afterwards, to wit, on the twenty-fourth day of September, in the year of our Lord one thousand eight hundred and forty, the aforesaid claimant, by his attorneys aforesaid, produced to the said district court here, the writ of the said United States of America, for the correcting of errors, of and upon the premises, commanding the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Circuit Court of the United States, for the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore, on the 1st Monday in November next; which said writ of error is in the words and of the tenor following, to wit:

Writ of error.

THE UNITED STATES OF AMERICA, *ss:*

[L. S.] The President of the United States, to the judge of the District Court of the United States, in and for the Maryland district, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said district court before you, between the United States of America, plaintiffs, and Sixty-one pieces of cloths and cassimeres, John Harris, claimant, a manifest error hath happened, to the great damage of the said John Harris, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Circuit Court of the United States, for the fourth circuit, in and for the Maryland district, together with this writ, so that you have the same at the city of Bal-

timore, on the first Monday in November next, in the said circuit court to be then and there held; that the record and proceedings being inspected by the said circuit court, may cause further to be done therein, to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of our Supreme Court, the second Monday in January, in the year of our Lord one thousand eight hundred and forty.

Issued 24th September, 1840.

THO. SPICER, *Clerk C. C.*

In pursuance whereof, and according to the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said circuit court accordingly.

District Court U. States, September term, 1840.

THE UNITED STATES.
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61 PIECES OF CLOTHS AND CASSIMERES—
JOHN HARRIS, claimant.

It is agreed between the parties in this case, by their counsel, that the several papers referred to in the bills of exception, dated this day, need not be inserted at length in the record for the circuit court, or in the record for the Supreme Court of the United States, (should the case be carried to that court,) but that the same may be read from the originals, by either party, at the argument, either in the Circuit Court or in the Supreme Court U. S.

NATH'L WILLIAMS,
U. S. District Attorney.
ST. GEO. W. TEACKLE,
Attorney for Claimant.

BALTIMORE, 23*d September*, 1840.

Citation.

The United States of America, to Nathaniel Williams, attorney of the United States, in and for the Maryland district, greeting:

You are hereby cited and admonished to appear at a circuit court of the United States, for the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore, on the first Monday in November next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States, in and for the Maryland district, wherein the United States of America are plaintiffs, and Sixty-one pieces of cloths and cassimeres, John Harris, claimant, is defendant, to show cause, if any there be, why the judgment ren-

dered against the said Sixty-one pieces of cloths and cassimeres, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand and seal, this twenty-fourth day of September, eighteen hundred and forty.

U. S. HEATH, [L. S.] *Dis't Judge.*

I acknowledge notice of the above citation.

NATH'L WILLIAMS,
U. S. District Attorney.

Writ of error bond.

Know all men by these presents, that we, Henry Beadel and Nicholas W. Goldsborough, of the city of Baltimore, in the district of Maryland, are held and firmly bound unto the United States of America, in the just and full sum of five hundred dollars, current money of the United States, to be paid to the said United States of America, their certain attorney or assigns, to which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly, firmly by these presents. Sealed with our seals, and dated this 9th day of June, in the year of our Lord one thousand eight hundred and forty-one.

Whereas, at a District Court of the United States, in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday in September, in the year of our Lord one thousand eight hundred and forty, the said United States of America, by the judgment of the same court, obtained a judgment of condemnation against Sixty-one pieces of cloths and cassimeres, whereof a certain John Harris is claimant.

And whereas the said John Harris hath sued out the writ of the said United States of America for the correcting of errors, and a citation directed to Nathaniel Williams, attorney of the United States in and for the Maryland district, citing and admonishing him to be and appear at a Circuit Court of the United States for the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore, on the first Monday in November then next, to show cause, if any there be, why the judgment of condemnation rendered against the said Sixty-one pieces of cloths and cassimeres, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Now, the condition of the above obligation is such, that if the said John Harris shall well and truly prosecute, with effect, his said writ of error, and pay to the said United States of America the costs and charges which have been adjudged to them in the said district court; and also all such costs and charges which may be awarded by the said circuit court in case he, the said John Harris,

shall fail to make his said plea good; then the above obligation to be void; otherwise to be and remain in full force and virtue.

HENRY BEADEL, [L. S.]
N. W. GOLDSBOROUGH. [L. S.]

Signed, sealed, and delivered in presence of
THO. L. LEVERING.

In testimony that the aforegoing is a true copy, taken from the record and proceedings of the district court aforesaid,
[L. S.] I hereunto subscribe my name, and affix the seal of the said district court, this fifteenth day of October, in the year of our Lord one thousand eight hundred and forty-one.

THO. SPICER, *Cl'k Dist. Court.*

And now here, at this day, to wit, the fourth day of May, in the year of our Lord one thousand eight hundred and forty-two, come into the circuit court here the said John Harris, claimant of the said sixty-one pieces of cloths and cassimeres, by his attorneys aforesaid, and the said United States of America, by their attorney aforesaid.

Judgment of the Circuit Court.

Whereupon, as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters by the said John Harris, above, for errors assigned, being seen and fully understood by the court here, and mature deliberation thereupon had, *for* it appears to the court here that there is no error, either in the record and proceedings aforesaid, or in the giving judgment aforesaid: therefore, it is considered by the court here that the judgment aforesaid, given in form aforesaid, be in all things affirmed, and stand in full force and effect, the said causes for error above assigned and alleged in any wise notwithstanding. And it is further considered by the court here, that the said United States of America have their execution against the said John Harris for the costs and charges adjudged unto them in the said district court; as also the sum of adjudged unto the said United States of America by the court here for their costs and charges, which they have sustained by occasion of the delay of the execution of the judgment aforesaid, by the pretence of the prosecution of the said writ of the said United States of America for the correcting of errors by the said John Harris, of and upon the premises as aforesaid prosecuted. And afterwards, to wit, on the fourth day of May, in the year of our Lord one thousand eight hundred and forty-two, the aforesaid claimant, by his attorneys aforesaid, produced to the said circuit court here the writ of the United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to

the Supreme Court of the United States, to be held at the city of Washington on the second Monday in January next; which said writ of error is in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA, *ss:*

[L. S.] The President of the United States to the judges of the Circuit Court of the United States for the district of Maryland, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said circuit court, before you or some of you, between John Harris, claimant of sixty-one pieces of cloths and cassimeres, plaintiff in error, and the United States of America, defendants in error, a manifest error hath happened, to the great damage of the said John Harris, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of our Supreme Court of the United States, the second Monday in January, in the year of our Lord one thousand eight hundred and forty-two.

THO. SPICER, *Cl'k Cir't Court.*

Issued 4th May, 1842.

In pursuance whereof, and according to the act of Congress in such cases made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

District Court United States—September term, 1840.

THE UNITED STATES.
vs.
61 PIECES OF CLOTHS AND CASSIMERES.
JOHN HARRIS, claimant.

It is agreed between the parties in this case, by their counsel, that the several papers referred to in the bills of exception dated this day need not be inserted at length in the record for the circuit court, or in the record for the Supreme Court United States, (should the case be carried to that court,) but that the same may be read

from the originals by either party at the argument, either in the circuit court or in the Supreme Court, United States.

NATH'L WILLIAMS,
U. S. Dist. Attorney.
St. G. W. TEACKLE,
Attorney for claimant.

Baltimore, September 23, 1840.

The United States of America to Z. Collins Lee, attorney of the United States in and for the Maryland district, greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be held at the city of Washington on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fourth circuit, in and for the Maryland district, wherein John Harris, claimant of sixty-one pieces of cloths and cassimeres, is plaintiff in error, and the United States of America are defendants in error, to show cause, if any there be, why the judgment against the said Sixty-one pieces of cloths and cassimeres in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand and seal this twenty-third day of August, in the year of our Lord one thousand eight hundred and forty-two.

R. B. TANEY, [L. S.]

I acknowledge notice of the above citation.

Z. COLLINS LEE, *U. S. Att'y.*

Know all men by these presents, that I, Nicholas W. Goldsborough, am held and firmly bound unto the United States of America in the just and full sum of five hundred dollars, current money of the United States, to be paid to the said United States, their certain attorney or assigns; to which payment, well and truly to be made and done, I hereby bind myself, my heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with my seal, and dated this twenty-third day of August, in the year of our Lord one thousand eight hundred and forty-two.

Whereas, at a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in April, in the year of our Lord one thousand eight hundred and forty-two, in a certain cause in the said court depending, on a writ of error from the district court of the United States in and for the Maryland district, wherein John Harris, claimant of sixty-one pieces of cloths and cassimeres, was plaintiff in error, and the United States of America were defendants in error, the judgment of the said district court was affirmed with costs.

And whereas, the said John Harris hath sued out the writ of the said United States of America for the correcting of errors, and a citation directed to Z. Collins Lee, attorney of the United States in and for the Maryland district, citing and admonishing him to be and

appear at a Supreme Court of the United States, to be held at the city of Washington on the second Monday in January next, to show cause, if any there be, why the judgment of affirmance so as aforesaid rendered, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Now, the condition of the above obligation is such, that if the said John Harris shall well and truly prosecute with effect his said writ of error, and pay to the said United States of America the costs and charges which have been adjudged to them in the said circuit court, and also all such costs and charges which may be awarded by the said Supreme Court, in case he, the said John Harris, shall fail to make his said plea good, then the above obligation to be void; otherwise to be and remain in full force and virtue.

N. W. GOLDSBOROUGH, [L. S.]

Signed, sealed, and delivered in presence of
THO. L. LEVERING.

I believe this bond to be sufficient.

Z. COLLINS LEE, *U. S. Att'y.*

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name and affix the seal of the said [L. S.] circuit court this twentieth day of September, in the year of our Lord one thousand eight hundred and forty-two.

THO. SPICER,
Clerk Circuit Court.

Filed 30th December, 1842.